IN THE HIGH COURT OF BOMBAY AT GOA

APPEAL FROM ORDER NO. 51 OF 2005

MRS. ANA MARIA BARRETO AND ANR., ...Appellants

Versus

MR. FRANCIS X. RODRIGUES AND ANR., ...Respondents

Mr. C.A. Ferreira, Advocate for the Appellants.
Mr. Shivan Dessai For R. 1 And 2.

Coram:- SMT. RANJANA DESAI, J.

Date:- 15th June, 2006

P.C.:

The appellants are the original Inventariantes. In this Appeal from Order, order dated 21st February, 2005 passed by Addl. Civil Judge S.D., Margao is under challenge. By this Order, the learned Judge has upheld the objections raised to the list of assets by the interested party and the inventory proceedings are dropped. The learned counsel for the appellants has drawn my attention to Article 1383 of the Portuguese Civil Procedure Code, 1939 (hereinafter referred to as the Code) which reads thus :-

" Where any co-heir or any other person, claims the ownership of the properties described and prays that the same be excluded from the description, the dispute shall be decided, after hearing the administrator or the person who described the properties, if different, and after evidence is led and necessary information is obtained "

2. He contended that the property in question could only be excluded from the inventory proceedings by the learned Judge after directing evidence to be led and after appreciating the said evidence. He submitted

that the learned Judge has observed that " It is prima facie established that the property in question was bequeathed to interested party by virtue of Will ". He submitted that on prima facie observations the inventory proceedings could not have been dropped. In support of his submissions, the learned counsel relied on Caetano Piedade da Costa v. Mr. Casimiro Gonsalinho da Costa and others reported in 1991 (2) G.L.T. 204.

3. I have also heard learned counsel for the respondents. He drew my attention to Article 1436 of the same Code and contended that another effective remedy of filing the suit is open to the appellants and hence the learned Judge cannot be faulted for having dropped the inventory proceedings.

4. In my opinion, the trial Court erred in dropping the inventory proceedings. Art.1383 of the said Code clearly states that in case ownership is claimed as regards the properties involved in inventory proceedings, that dispute has to be decided after hearing the Administrator or the person who described the property , if different, and after evidence is led and necessary information is obtained. The learned Judge, therefore, could not have dropped the proceedings without directing the parties to lead evidence. Reliance placed by the learned counsel for the appellants on the Judgment of this Court in Caetano Piedade da Costa v. Mr. Casimiro Costa (supra) is apt. In that case in somewhat similar fact situation this Court has held that in such matters, evidence is required to be taken. In view of this, in my opinion this would be a fit case to remand the matter to the trial Court for disposing it of after directing the parties to lead evidence. Hence the following Order :-

5. The impugned Order passed by the Ist Addl. Civil Judge Sr. Divn., Margao dated 21st February, 2005 is set aside and the matter is remanded to the trial Court with a direction that the trial Court shall deal with it afresh, after directing the parties to lead evidence. No opinion has been expressed by this Court on any of the issues involved.

Appeal from Order disposed of.

SMT. RANJANA DESAI, J.

sl.